

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-276-S - ORDER NO. 2021-471

JULY 8, 2021

IN RE:	Application of The Golf Club at Briar's)	ORDER DESIGNATING
	Creek Property Owners Association for)	HOMEOWNERS ASSOCIATION
	Approval of an Exemption for a)	UNDER REGULATION 103-
	"Homeowners Association" as Defined)	502.5
	in Regulation 103-502.5, from)	
	Regulation of Its Terms of Service,)	
	Rates and Charges)	

This matter comes before the Public Service Commission of South Carolina (Commission) on the Petition from The Golf Club at Briar's Creek Property Owners Association, Incorporated ("Association"), a homeowners association operating a sewer system and wastewater treatment plant, requesting exemption from regulation of its terms of service, rates and charges under S.C. Code Ann. Regs. 103-502.5 (2012). For the reasons explained herein, the Commission concluded that the Petition should be granted.

I. INTRODUCTION

On November 19, 2020, the Association filed a Notice of Intent related to its sewerage utility services as required by S.C. Code Ann. § 58-5-240 (2015). The Notice stated as follows:

Please be advised that The Golf Club at Briar's Creek Property Owners Association intends to file, not earlier than thirty (30) days from the date of this notice, an application seeking approval by the Public Service Commission of an exemption for a "homeowners association," as defined in Regulation 103-502.5, from regulation of its terms of service, rates and charges. The Association will be operating a sewer system and wastewater treatment plant exclusively

serving a development known as The Golf Club at Briar's Creek in the unincorporated portion of Charleston County that is not served by any other sewer utility. The application will be accompanied by a request for approval of a service area limited to Briar's Creek.

See, Notice of Intent Letter dated November 19, 2020.

On March 24, 2021, the Association petitioned this Commission for exemption from Commission regulation of its sewer service under the Homeowners Association (“HOA”) exemption found in Commission Regulation 103-502.5. S.C. Code Ann. Regs. 103-502.5 (2012). Once a homeowners’ association complies with the provisions of this Regulation, its sewer service is removed from the Commission’s jurisdiction.

II. DISCUSSION OF EVIDENCE AND LAW

Regulation 103-502.5 defines a “Homeowners Association” as:

[a]n association of lot owners located in a particular subdivision or development incorporated under the laws of this State as a non-profit corporation, including as one of its purposes, the operation of a sewerage system to serve the particular subdivision or development....

S.C. Code Ann. Regs. 103-502.5 (2012). In order to comply with Regulation, it is necessary for Association:

prior to the commencement of operations of a sewerage system, shall file with the commission and provide a copy to the ORS **(a) a certified copy of its certificate of incorporation; (b) a copy of the corporation’s bylaws; (c) a copy of any declaration of covenants, conditions and restrictions on real property in the subdivision or development filed in conjunction with the formation of the homeowners association; (d) a copy of the permit or authorization from the Department of Health and Environmental Control issued to the homeowners association to operate the system, and (e) copies of a statement signed by each lot owner disclosing that the**

sewerage services in the subdivision are provided by a non-profit homeowners association, in which each lot owner is a voting member, and that an appropriate assessment to meet operating expenses of the Utility must be paid by each lot owner.

Id. (emphasis added).

The Association submitted with its Petition the required documentation¹ set forth in Regulation 103-502.5 with one exception. In lieu of the required DHEC permit, the Association submitted a copy of the DHEC Land Application Discharge Permit No. ND0080977 issued to developer Briar's Creek Holdings, LLC ("Holdings"). With the disclosure statements of each property owner, the Association and developer Holdings recommended the ownership of the sewerage system and its facilities by the Association. The sewerage system and its facilities are comprised of the following assets: a wastewater treatment plant, 13-acre spray field, and all sewer lines and pump stations within the development.

Holdings is the developer of the planned private community of Briar's Creek located on Johns Island, South Carolina in Charleston County. Holdings has operated the existing wastewater treatment plant and related facilities for the benefit of this developed community. While the wastewater treatment facility and the corresponding land application permit (ND0080977) are currently owned and held by Holdings, DHEC stated that it will transfer the ND Permit to the Association after the sale is finalized and final sale

¹ The Association included with its Petition copies of the signed lot owner statements for each lot in the development as of March 17, 2021, which are: Lots 1, 2, 3, 4, 5, 6, 7, 7a, 8, 9, 10, 11, 12, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37a, 37b, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89.

documents and proof of funding in the reserve account required by DHEC are provided to DHEC. See, DHEC letter dated November 5, 2020. DHEC further confirmed that Holdings shall deposit in the community reserve account approximately \$125,754.00 for the Association to use in operating the wastewater treatment facility for at least three (3) years. Id.

The Association attests to the Commission that it “will provide a copy of the revised Land Application permit to the Public Service Commission and ORS within 30 days of receipt from DHEC.” See, The Golf Club at Briar’s Creek Property Owners Association’s Letter dated March 17, 2021. Additionally, the Association and Holdings further state that Holdings is in the process of transferring the sewer treatment plant and related facilities to the Association. Upon approval by the Commission of the request for exemption, Holdings will transfer the DHEC operating permits to the Association. See, Briar’s Creek Holdings, LLC’s Letter dated April 8, 2021.

ORS does not object to the Association seeking approval of Homeowner Association exemption status as provided by S.C. Code Ann. Regs. 103-502.5 prior to taking ownership of the wastewater facility and obtaining the corresponding DHEC Permit in this circumstance. The Commission finds that it is likewise a practical sequence of events in this circumstance for the Commission to provide approval of the Homeowner Association exemption status provided by S.C. Code Ann. Regs. 103-502.5 to the Association before the transfer of ownership of the wastewater facility and the corresponding DHEC Permit currently held by the developer, Holdings.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a thorough consideration of the Petition, the evidence and applicable law, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Golf Club at Briar's Creek Property Owners Association, Incorporated is a non-profit corporation formed to provide sewage services to the development known as The Golf Club at Briar's Creek in Charleston County, South Carolina. The Association asserts that membership in the organization is limited to owners of real property to be served by the corporation.

2. The Golf Club at Briar's Creek is being developed as a residential community by developer Briar's Creek Holdings, LLC.

3. In its Petition, the Association submitted the following documentation:

- a. a copy of its certification of insurance in the State of South Carolina.
- b. a copy of its Bylaws.
- c. a copy of the Declaration of Covenants and Restrictions for The Golf Club at Briar's Creek Property Owners Association, Inc.
- d. a copy of the operating permit issued by DHEC for the sewage treatment system to developer Briar's Creek Holdings, LLC, which is DHEC Land Application Discharge Permit No. ND0080977.
- e. a copy of the DHEC letter dated November 5, 2020, stating that DHEC will transfer the ND Permit No. ND0080977 to the Association after the sale is finalized between the Association and Holdings and upon receipt of a copy of the final sale

documents and proof of funding in the reserve account required by DHEC are provided to DHEC.

f. a copy of statements signed by all present lot owners disclosing that they understand that the sewer services will be provided by a non-profit corporation owned solely by the homeowners.

4. While the DHEC Permit for the wastewater treatment facility is currently in the name of the developer, Briar's Creek Holdings, LLC, the Association has stated to the Commission that it "will provide a copy of the revised Land Application permit to the Public Service Commission and ORS within 30 days of receipt from DHEC." See, The Golf Club at Briar's Creek Property Owners Association's Letter dated March 17, 2021.

5. The Association and Holdings (developer) are in the process of transferring the sewer treatment plant and its related facilities to the Association, and have presented evidence that upon approval by the Commission of the request for exemption, Holdings will transfer the sewerage system and its assets, including the DHEC operating permit, to the Association.

6. The Commission finds that it is a practical sequence of events in this circumstance for the Commission to provide approval of the Homeowner Association exemption status allowed by S.C. Code Ann. Regs. 103-502.5 to the Association before the transfer of ownership of the wastewater facility and the corresponding DHEC Permit currently held by the developer, Briar's Creek Holdings, LLC. We find that the Association meets the requirements of S.C. Code Ann. Regs. 103-502.5 for an exemption

as described herein and that it is in the public interest to grant the exemption from regulation by this Commission.

CONCLUSIONS OF LAW

1. The Golf Club at Briar's Creek Property Owners Association, Incorporated is a homeowner's association that supplies sewer service to the public for compensation and is a utility subject to the jurisdiction, rules and regulations of the Commission.

2. The Golf Club at Briar's Creek Property Owners Association, Incorporated is an association comprised of lot owners located in the Briar's Creek development and is incorporated under the laws of this State as a non-profit corporation, including as one of its purposes, to own and operate a sewerage system to serve each property owner in the Briar's Creek development who are also known as members of The Club at Briar's Creek Property Owners Association.

3. Based on the documentation submitted by The Golf Club at Briar's Creek Property Owners Association, Incorporated in its Petition, the Commission concludes that all existing lot owners have signed documents which place them on notice that should the Association take ownership of the sewerage facilities at Briar's Creek:

a. sewer service will be provided by a non-profit corporation owned solely by the homeowner's association of which the lot owner is a member;

b. each property owner member of the Association will be subject to an appropriate assessment to meet operating expenses of the sewer facilities which must be paid along with the other assessments due to the Association; and

c. the sewerage system currently owned by the developer of Briar's Creek, Briar's Creek Holdings, LLC, has agreed to assign the sewer facilities at no cost, fund transactional legal fees and Commission filings, and fund past reserves to facilitate the transaction to the Association.

4. The Commission concludes that The Golf Club at Briar's Creek Property Owners Association, Incorporated does not have an operating permit in its name from the Department of Health and Environmental Control (DHEC) because the sewer treatment plant is currently owned and operated by the developer, Briar's Creek Holdings, LLC, and the permit was issued in the developer's name.

5. For the present purposes, the Commission finds and concludes that it is in the best interest of the public to waive the requirement that a sewage operating permit be issued in the name of the Association per S.C. Code Ann. Regs. 103-502.5, provided, however, that the Association files with the Commission a certified true copy of the DHEC operating permit issued in its name for the sewage treatment plant.

5. The Commission finds and concludes that The Golf Club at Briar's Creek Property Owners Association, Incorporated has substantially complied with the filing and other requirements delineated in S.C. Code Ann. Regs. 103-502.5.

6. The Commission concludes that The Golf Club at Briar's Creek Property Owners Association, Incorporated qualifies as a homeowner's association exempt from Commission regulation under S.C. Code Ann. Regs. 103-502.5.

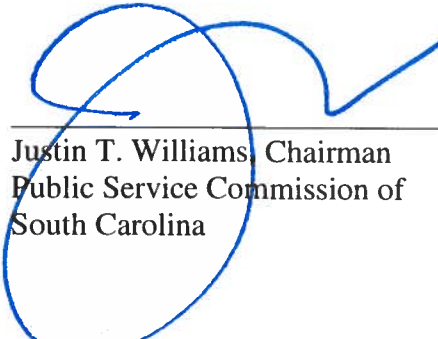
IV. ORDERING PROVISIONS

IT IS THEREFORE ORDERED THAT:

1. The sewage service operated by The Golf Club at Briar's Creek Property Owners Association, Incorporated shall be exempt from regulation by this Commission.
2. Within thirty (30) days of closing on the transfer of the sewerage system and related facilities from the developer, Briar's Creek Holdings, LLC, to the Association, The Golf Club at Briar's Creek Property Owners Association, Incorporated, or persons on behalf of the Association, shall file written notification of closing on the sewerage system, treatment plant and related facilities with the Commission.²
3. Within thirty (30) days of its receipt, The Golf Club at Briar's Creek Property Owners Association, Incorporated shall file a copy of its DHEC sewage treatment operating permit with the Commission.
4. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:




Justin T. Williams, Chairman
Public Service Commission of
South Carolina

² On June 21, 2021, the Office of Regulatory Staff filed a copy of the letter dated June 16, 2021, addressed to the South Carolina Department of Health and Environmental Control by Briar's Creek Holdings, LLC. The letter requested transfer of the existing Land Application Discharge Permit No. ND0080977 from Briar's Creek Holdings, LLC to The Golf Club at Briar's Creek Property Owners Association. The letter further confirmed that on June 10, 2021, there was a sale of the wastewater treatment facility subject to Permit No. ND0080977 to the Association and that such transfer of ownership was complete as shown by the enclosed copy of the Deed and Assignment filed in Charleston County.